

INDUSTRY CIRCULAR

OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE
ALCOHOL AND TOBACCO TAX DIVISION



WASHINGTON 25, D. C.

Industry Circular No. 62- 35

November 16, 1962

TOBACCO PRODUCTS WITHDRAWN FROM THE MARKET

Manufacturers of tobacco products
and others concerned:

Purpose. This industry circular is to advise you regarding a condition governing the allowance of claims for refund of tax on tobacco products withdrawn from the market and the execution of Form 3069, Schedule of Tobacco Products or Cigarette Papers or Tubes Withdrawn from the Market.

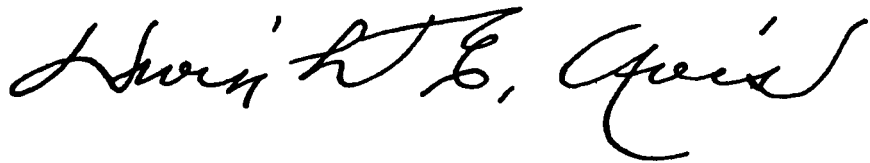
Background. Recently it came to our attention that damaged tobacco products were destroyed at the premises of a wholesale tobacco dealer, before the manufacturer of the products had any knowledge of the matter and, therefore, the manufacturer could not claim that the tobacco products were in his possession or ownership and that he had withdrawn the products from the market. The dealer prepared the required schedule and the tobacco products were destroyed under the supervision of an Alcohol and Tobacco Tax Inspector. The dealer contemplated that the schedule would thereafter be transmitted to the manufacturer who would file claim for refund of tax under Section 5705, Internal Revenue Code.

One condition to refund of tax on domestic tobacco products under Section 5705 of the Code is the withdrawal of the products from the market by the manufacturer who paid the tax. In the instance cited, the matter first came to the attention of the manufacturer when the tobacco products were no longer in existence so the manufacturer could not properly claim that he had withdrawn them from the market. Accordingly, a claim for refund of tax on such products could not be allowed. It is to be understood, however, that the law and regulations do not preclude allowance of a claim where the tobacco products are destroyed at a dealer's premises if the manufacturer takes possession or acquires ownership of the tobacco products prior to destruction. The action of the manufacturer in withdrawing the tobacco products from the market is evidenced by the signature of the manufacturer (or for the manufacturer by his designated representative) on the schedule, at Item 12 on Form 3069 (Rev. 2-62). If the previous revision of the Form 3069 is used, the Form should be signed at Item 11 between such number and the word "total."

Execution of Schedule for the Manufacturer by his Representative.

Whenever a manufacturer withdraws tobacco products from the market and the schedule, Form 3069, is to be executed in his behalf by an employee such as a district manager, distribution manager, etc. (not otherwise authorized to sign documents filed with the assistant regional commissioner (alcohol and tobacco tax)), the manufacturer is responsible for filing a Power of Attorney, Form 1534, as provided for in Section 270.68 of regulations, authorizing such person to so act. Prior to the execution of any schedule for the manufacturer by the person named in the power of attorney such power of attorney must be on file with the assistant regional commissioner (alcohol and tobacco tax) for the region where the claim will be filed. Timely filing of Form 1534 is the responsibility of the manufacturer. After products have been disposed of and the claim for refund filed, alcohol and tobacco tax offices will determine whether the person who executed Form 3069 was duly authorized to act in behalf of the manufacturer. Execution of Form 3069 by a person not authorized to do so may result in disallowance of the claim. Additionally, manufacturers should fully instruct their representatives in the proper preparation of Form 3069, particularly regarding Item 1, Item 5, and Item 8 of the schedule.

Inquiries. Inquiries in regard to this industry circular should refer to its number and be addressed to the office of your assistant regional commissioner (alcohol and tobacco tax).



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